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H.45

Introduced by Representatives Donnally of Hyde Park, LaLonde of South
Burlington, and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Domestic relations; abuse prevention; abusive litigation

Statement of purpose of bill as introduced: This bill proposes to permit a court
to issue an order restricting abusive litigation if one party has been found by a
court to have abused, stalked, or sexually assaulted the other party.

An act relating to abusive litigation filed against survivors of domestic
abuse, stalking, or sexual assault

It is hereby enacted by the General Assembly of the State of Vermont:

~~§ 1. 15 V.S.A. chapter 21, subchapter 5 is added to read.~~

Subchapter 5. Abusive Litigation

§ 1181. DEFINITION OF ABUSIVE LITIGATION

As used in this subchapter:

(1) "Abusive litigation" means:

~~(A) litigation where the following apply:~~

1 ~~(i) the opposing parties have a current or former family or~~
2 ~~household member relationship or there has been a civil order or criminal~~
3 ~~conviction determining that one of the parties stalked the other party;~~
4 ~~(ii) the party who is filing, initiating, advancing, or continuing the~~
5 ~~litigation has been found by a court to have abused, stalked, or sexually~~
6 ~~assaulted the other party pursuant to:~~
7 ~~(I) a final order issued pursuant to subchapter 1 of this chapter~~
8 ~~(abuse prevention orders);~~
9 ~~(II) a final order issued pursuant to 12 V.S.A. chapter 178~~
10 ~~(orders against stalking or sexual assault);~~
11 ~~(III) a final foreign abuse prevention order;~~
12 ~~(IV) an order under section 665a of this title (conditions of~~
13 ~~parent-child contact in cases involving domestic violence);~~
14 ~~(V) a conviction for domestic assault pursuant to 13 V.S.A.~~
15 ~~chapter 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter~~
16 ~~7; or sexual assault pursuant to 13 V.S.A. chapter 72; or~~
17 ~~(VI) a court determination of probable cause for a charge of~~
18 ~~domestic assault and the court imposed criminal conditions of release~~
19 ~~pertaining to the safety of the victim, and~~

1 ~~(iii) the litigation is being initiated, advanced, or continued~~
2 primarily for the purpose of abusing, harassing, intimidating, threatening, or
3 maintaining contact with the other party; and

4 (B) at least one of the following factors apply:

5 (i) claims, allegations, or other legal contentions made in the
6 litigation are not warranted by existing law or by a reasonable argument for the
7 extension, modification, or reversal of existing law, or the establishment of
8 new law;

9 (ii) allegations and other factual contentions made in the litigation
10 are without the existence of evidentiary support; or

11 (iii) an issue or issues that are the basis of the litigation have
12 previously been filed in one or more other courts or jurisdictions and the
13 actions have been litigated and disposed of unfavorably to the party filing,
14 initiating, advancing, or continuing the litigation.

15 (2) “Foreign abuse prevention order” means any protection order issued
16 by the court of any other state that contains provisions similar to relief
17 provisions authorized under this chapter, the Vermont Rules for Family
18 Proceedings, or 12 V.S.A. chapter 178. “Other state” and “issuing state” mean
19 any state other than Vermont and any federally recognized Indian tribe,
20 territory or possession of the United States, the Commonwealth of Puerto
21 Rico, or the District of Columbia.

1 ~~(3) "Litigation" means any kind of legal action or proceeding,~~

2 ~~including:~~

3 ~~(A) filing a summons, complaint, demand, or petition;~~

4 ~~(B) serving a summons, complaint, demand, or petition, regardless of~~
5 ~~whether it has been filed;~~

6 ~~(C) filing a motion, notice of court date, note for motion docket, or~~
7 ~~order to appear;~~

8 ~~(D) serving a motion, notice of court date, or order to appear,~~
9 ~~regardless of whether it has been filed or scheduled;~~

10 ~~(E) filing a subpoena, subpoena duces tecum, request for~~
11 ~~interrogatories, request for production, notice of deposition, or other discovery~~
12 ~~request; or~~

13 ~~(F) serving a subpoena, subpoena duces tecum, request for~~
14 ~~interrogatories, request for production, notice of deposition, or other discovery~~
15 ~~request.~~

16 ~~(4) "Perpetrator of abusive litigation" means a person who files,~~
17 ~~initiates, advances, or continues litigation in violation of an order restricting~~
18 ~~abusive litigation.~~

19 § 1182. ORDER RESTRICTING ABUSIVE LITIGATION

20 (a) A party to a case may request from the court an order restricting

21 abusive

1 litigation if:

2 (1) the opposing parties have a current or former family or household
3 member relationship or there has been a civil order or criminal conviction
4 determining that one of the parties stalked the other party; and

5 (2) the party who is filing, initiating, advancing, or continuing the
6 litigation has been found by a court to have abused, stalked, or sexually
7 assaulted the other party pursuant to:

8 (i) a final order issued pursuant to subchapter 1 of this chapter
9 (abuse prevention orders);

10 (ii) a final order issued pursuant to 12 V.S.A. chapter 178 (orders
11 against stalking or sexual assault);

12 (iii) a final foreign abuse prevention order;

13 (iv) an order under section 665a of this title (conditions of parent-
14 child contact in cases involving domestic violence);

15 (v) a conviction for domestic assault pursuant to 13 V.S.A. chapter
16 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or
17 sexual assault pursuant to 13 V.S.A. chapter 72; or

18 (vi) a court determination of probable cause for a charge of
19 domestic assault and the court imposed criminal conditions of release
20 pertaining to the safety of the victim.

1 ~~(b) A party who meets the requirements of subsection (a) of this section~~
2 ~~may request an order restricting abusive litigation:~~

3 ~~(1) in an answer or response to the litigation being filed, initiated,~~
4 ~~advanced, or continued;~~

5 ~~(2) by motion made at any time during any open or ongoing case;~~

6 ~~(3) in an answer or response to any motion or request for an order; or~~

7 ~~(4) orally in any hearing.~~

8 ~~(c) Any court of competent jurisdiction may, on its own motion, determine~~
9 ~~that a hearing is necessary to determine if a party is engaging in abusive~~
10 ~~litigation.~~

11 ~~(d) The Court Administrator shall create forms for the motion for an order~~
12 ~~restricting abusive litigation and an order restricting abusive litigation, and the~~
13 ~~forms shall be maintained by the clerks of the courts.~~

14 ~~(e) No filing fee shall be charged to the unrestricted party for proceedings~~
15 ~~pursuant to this subchapter, regardless of whether it is filed pursuant to this~~
16 ~~subchapter.~~

17 ~~(f) The provisions of this subchapter are nonexclusive and shall not affect~~
18 ~~any other remedy available.~~

19 § 1183. HEARING; PROCEDURE

20 At the hearing, evidence of any of the following shall create a rebuttable
21 presumption that litigation is being initiated, advanced, or continued primarily

1 ~~for the purpose of harassing, intimidating, or maintaining contact with the~~
2 ~~other party:~~

3 ~~(1) The same or substantially similar issues between the same or~~
4 ~~substantially similar parties have been litigated within the past five years in the~~
5 ~~same court or any other court of competent jurisdiction.~~

6 ~~(2) The same or substantially similar issues between the same or~~
7 ~~substantially similar parties have been raised, pled, or alleged in the past five~~
8 ~~years and were dismissed on the merits or with prejudice.~~

9 ~~(3) Within the last 10 years, the party allegedly engaging in abusive~~
10 ~~litigation has been sanctioned by any court for filing one or more cases,~~
11 ~~petitions, motions, or other filings that were found to have been frivolous,~~
12 ~~vexatious, intransigent, or brought in bad faith involving the same opposing~~
13 ~~party.~~

14 ~~(4) Any court has determined that the party allegedly engaging in~~
15 ~~abusive litigation has previously engaged in abusive litigation or similar~~
16 ~~conduct and has been subject to a court order imposing pre-filing restrictions.~~

17 § 1184. BURDEN OF PROOF

18 ~~(a) If the court finds by a preponderance of the evidence that a party is~~
19 ~~engaging in abusive litigation and that any or all of the motions or actions~~
20 ~~pending before the court are abusive litigation, the litigation shall be~~
21 ~~dismissed, denied, stricken, or resolved by other disposition with prejudice.~~

1 ~~(b) In addition to dismissal or denial of any pending abusive litigation~~
2 within the jurisdiction of the court, the court shall enter an “order restricting
3 abusive litigation.” The order shall do each of the following:

4 (1) impose all costs of any abusive civil action pending in the court at
5 the time of the court’s finding against the party advancing the abusive
6 litigation;

7 (2) award the other party reasonable attorney’s fees and costs of
8 responding to the abusive litigation, including the cost of seeking the order
9 restricting abusive litigation; and

10 (3) identify the party protected by the order and impose prefiling
11 restrictions upon the party found to have engaged in abusive litigation for a
12 period of not less than 48 months nor more than 72 months.

13 (c) If the court finds that the litigation does not constitute abusive
14 litigation, the court shall enter written findings and the litigation shall proceed.

15 Nothing in this section or chapter shall be construed as limiting the court’s
16 inherent authority to control the proceedings and litigants before it.

17 § 1185. FILING OF A NEW CASE BY A PERSON SUBJECT TO AN
18 ORDER RESTRICTING ABUSIVE LITIGATION

19 (a) Except as otherwise provided in this section, a person who is subject to
20 an order restricting abusive litigation is prohibited from filing, initiating,

1 ~~advancing, or continuing the litigation against the protected party for the~~
2 ~~period of time that the filing restrictions are in effect.~~

3 (d) A person who is subject to an order restricting litigation against
4 whom pre-filing restrictions have been imposed pursuant to this subchapter
5 who wishes to initiate a new case or file a motion in an existing case during the
6 time the person is under filing restrictions shall make an application to a
7 judicial officer. A judicial officer shall review such application and determine
8 whether the proposed litigation is abusive litigation or if there are reasonable
9 and legitimate grounds upon which the litigation is based. The judicial officer
10 shall determine whether a hearing is required.

11 (c)(1) If the judicial officer determines the proposed litigation is abusive
12 litigation based on reviewing the records, it is not necessary for the person
13 protected by the order to appear or participate in any way. If the judicial
14 officer is unable to determine whether the proposed litigation is abusive
15 without hearing from the person protected by the order, then the court shall
16 issue an order scheduling a hearing and notifying the protected party of the
17 party's right to appear or participate in the hearing. The order shall specify
18 whether the protected party is expected to submit a written response. When
19 possible, the protected party shall be permitted to appear remotely.

20 (2) If the judicial officer believes the litigation that the party who is
21 subject to the pre-filing order is making application to file will constitute

1 ~~abusive litigation, the application shall be denied, dismissed, or otherwise~~
2 ~~disposed of with prejudice.~~

3 (c) If the judicial officer believes that the litigation the party who is
4 subject to the prefiling order is making application to file will not be abusive
5 litigation, the judicial officer may grant the application and issue an order
6 permitting the filing of the case, motion, or pleading. The order shall be
7 attached to the front of the pleading to be filed with the clerk. The party who
8 is protected by the order shall be served with a copy of the order at the same
9 time as the underlying pleading.

10 (d) The judicial officer shall make written findings supporting the ruling.
11 If the party who is subject to the order disputes the finding of the judge, the
12 party may seek review of the decision as provided by the applicable court
13 rules.

14 (e) If the application for the filing of a pleading is granted pursuant to this
15 section, the period of time commencing with the filing of the application
16 requesting permission to file the action and ending with the issuance of an
17 order permitting filing of the action shall not be computed as a part of any
18 applicable period of limitations within which the matter must be instituted.

19 (f) If, after a party who is subject to prefiling restrictions has made
20 application and been granted permission to file or advance a case pursuant to
21 this section, any judicial officer hearing or presiding over the case, or any part

1 ~~thereof, determines that the person is attempting to add parties, amend the~~
2 complaint, or is otherwise attempting to alter the parties and issues involved in
3 the litigation in a manner that the judicial officer reasonably believes would
4 constitute abusive litigation, the judicial officer shall stay the proceedings and
5 refer the case back to the judicial officer who granted the application to file,
6 for further disposition.

7 (g)(1) If a party who is protected by an order restricting abusive litigation
8 is served with a pleading filed by the person who is subject to the order, and
9 the pleading does not have an attached order allowing the pleading, the
10 protected party is under no obligation or duty to respond to the summons,
11 complaint, petition, or motion; to answer interrogatories; to appear for
12 depositions; or to perform any other responsive action required by rule or
13 statute in a civil action. The protected party may respond to the case by filing
14 a copy of the order restricting abusive litigation.

15 (2) If it is brought to the attention of the court that a person against
16 whom prefiling restrictions have been imposed has filed a new case or is
17 continuing an existing case without having been granted permission pursuant
18 to this section, the court shall dismiss, deny, or otherwise dispose of the matter.
19 This action may be taken by the court on the court's own motion or initiative.

20 ~~The court may take whatever action against the perpetrator of abusive~~

1 ~~litigation deemed necessary and appropriate for a violation of the order~~
2 ~~restricting abusive litigation.~~

3 Sec. 2. EFFECTIVE DATE

4 ~~This act shall take effect on September 1, 2023.~~

Sec. 1. 15 V.S.A. chapter 21, subchapter 5 is added to read:

Subchapter 5. Abusive Litigation

§ 1181. DEFINITION OF ABUSIVE LITIGATION

As used in this subchapter:

(1) "Abusive litigation" means:

(A) litigation where the following apply:

(i) the opposing parties have a current or former family or household member relationship or there has been a civil order or criminal conviction determining that one of the parties stalked or sexually assaulted the other party;

(ii) the party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have abused, stalked, or sexually assaulted the other party pursuant to:

(I) a final order issued pursuant to subchapter 1 of this chapter (abuse prevention orders);

(II) a final order issued pursuant to 12 V.S.A. chapter 178 (orders against stalking or sexual assault);

(III) a final foreign abuse prevention order;

(IV) an order under section 665a of this title (conditions of parent-child contact in cases involving domestic violence);

(V) a conviction for domestic assault pursuant to 13 V.S.A. chapter 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or sexual assault pursuant to 13 V.S.A. chapter 72; or

(VI) a court determination of probable cause for a charge of domestic assault and the court imposed criminal conditions of release pertaining to the safety of the victim, which include distance restrictions or restrictions on contact with the victim; and

(iii) the litigation is being initiated, advanced, or continued primarily for the purpose of abusing, harassing, intimidating, threatening, or maintaining contact with the other party; and

(B) at least one of the following factors apply:

(i) claims, allegations, or other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(ii) allegations and other factual contentions made in the litigation are without adequate evidentiary support or are unlikely to have evidentiary support after a reasonable opportunity for further investigation; or

(iii) an issue or issues that are the basis of the litigation have previously been filed in one or more other courts or jurisdictions and the actions have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation.

(2) “Foreign abuse prevention order” means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont Rules for Family Proceedings, or 12 V.S.A. chapter 178. “Other state” and “issuing state” mean any state other than Vermont and any federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(3) “Litigation” means any kind of legal action or proceeding, including:

(A) filing a summons, complaint, or petition;

(B) serving a summons, complaint, or petition, regardless of whether it has been filed;

(C) filing a motion, notice of court date, or order to appear;

(D) serving a motion, notice of court date, or order to appear, regardless of whether it has been filed or scheduled;

(E) filing a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request; or

(F) serving a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request.

(4) “Perpetrator of abusive litigation” means a person who files, initiates, advances, or continues litigation in violation of an order restricting abusive litigation.

§ 1182. ORDER RESTRICTING ABUSIVE LITIGATION

(a) A party may request from the court an order restricting abusive litigation if:

(1) the opposing parties have a current or former family or household member relationship or there has been a civil order or criminal conviction determining that one of the parties stalked or sexually assaulted the other party; and

(2) the party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have abused, stalked, or sexually assaulted the other party pursuant to:

(i) a final order issued pursuant to subchapter 1 of this chapter (abuse prevention orders);

(ii) a final order issued pursuant to 12 V.S.A. chapter 178 (orders against stalking or sexual assault);

(iii) a final foreign abuse prevention order;

(iv) an order under section 665a of this title (conditions of parent-child contact in cases involving domestic violence);

(v) a conviction for domestic assault pursuant to 13 V.S.A. chapter 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or sexual assault pursuant to 13 V.S.A. chapter 72; or

(vi) a court determination of probable cause for a charge of domestic assault and the court imposed criminal conditions of release pertaining to the safety of the victim, which include distance restrictions or restrictions on contact with the victim.

(b) A party who meets the requirements of subsection (a) of this section may request an order restricting abusive litigation:

(1) in any answer or response to the litigation being filed, initiated, advanced, or continued;

(2) by motion made at any time during any open or ongoing case;

(3) in an answer or response to any motion or request for an order; or

(4) orally in any hearing.

(c) Any court of competent jurisdiction may, on its own motion or on motion of a party, determine that a hearing is necessary to determine if a party is engaging in abusive litigation.

(d) Proceedings pursuant to this subchapter may be initiated by petition instituting a new case or by motion in a pending case.

(e) The Court Administrator shall create forms for a petition or motion for an order restricting abusive litigation and an order restricting abusive litigation, and the forms shall be maintained by the clerks of the courts.

(f) No filing fee shall be charged to the unrestricted party for proceedings pursuant to this subchapter, regardless of whether it is filed pursuant to this subchapter.

(g) The provisions of this subchapter are nonexclusive and shall not affect any other remedy available.

§ 1183. HEARING; PROCEDURE

At the hearing, evidence of any of the following shall create a rebuttable presumption that litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party:

(1) The same or substantially similar issues between the same or substantially similar parties have been litigated within the past five years in the same court or any other court of competent jurisdiction.

(2) The same or substantially similar issues between the same or substantially similar parties have been raised, pled, or alleged in the past five years and were decided on the merits or dismissed.

(3) Within the last 10 years, the party allegedly engaging in abusive litigation has been sanctioned by any court for filing one or more cases, petitions, motions, or other filings that were found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the same opposing party.

(4) Any court has determined that the party allegedly engaging in abusive litigation has previously engaged in abusive litigation or similar conduct and has been subject to a court order imposing prefiling restrictions.

§ 1184. BURDEN OF PROOF

(a) If the court finds by a preponderance of the evidence that a party is engaging in abusive litigation and that any or all of the motions or actions pending before the court are abusive litigation, the litigation shall be dismissed, denied, stricken, or resolved by other disposition with prejudice.

(b)(1) After providing the parties an opportunity to be heard on any order or sanctions to be issued, the court may enter an order restricting abusive litigation that may include conditions deemed necessary and appropriate including:

(2) awarding the other party reasonable attorney's fees and costs of responding to the abusive litigation, including the cost of seeking the order restricting abusive litigation; and

(3) identifying the party protected by the order and imposing prefiling restrictions upon the party found to have engaged in abusive litigation that pertains to any future litigation against the protected party or the protected party's dependents.

(c) If the court finds that the litigation does not constitute abusive litigation, the court shall enter written or oral findings and the litigation shall proceed. Nothing in this section or chapter shall be construed as limiting the court's inherent authority to control the proceedings and litigants before it.

§ 1185. FILING OF A NEW CASE BY A PERSON SUBJECT TO AN

ORDER RESTRICTING ABUSIVE LITIGATION

(a) Except as otherwise provided in this section, a person who is subject to an order restricting abusive litigation is prohibited from filing, initiating, advancing, or continuing the litigation against the protected party for the period of time that the filing restrictions are in effect.

(b) A person who is subject to an order restricting litigation against whom prefiling restrictions have been imposed pursuant to this subchapter who wishes to initiate a new case or file a motion in an existing case during the time the person is under filing restrictions shall make an application to a

judicial officer. A judicial officer shall review such application and determine whether the proposed litigation is abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based. The judicial officer shall determine whether a hearing is necessary.

(c)(1) If the judicial officer determines the proposed litigation is abusive litigation based on reviewing the files, records, and pleadings, it is not necessary for the person protected by the order to appear or participate in any way. If the judicial officer is unable to determine whether the proposed litigation is abusive without hearing from the person protected by the order, then the court shall issue an order scheduling a hearing and notifying the protected party of the party's right to appear or participate in the hearing. The order shall specify whether the protected party is expected to submit a written response. When possible, the protected party shall be permitted to appear remotely.

(2) If the judicial officer believes the litigation that the party who is subject to the prefiling order is making application to file will constitute abusive litigation, the application shall be denied, dismissed, or otherwise disposed of with prejudice.

(3) If the judicial officer believes that the litigation the party who is subject to the prefiling order is making application to file will not be abusive litigation, the judicial officer may grant the application and issue an order

permitting the filing of the case, motion, or pleading. The order shall be attached to the front of the pleading to be filed with the clerk. The party who is protected by the order shall be served with a copy of the order at the same time as the underlying pleading.

(d) The judicial officer shall make findings and issue a written order supporting the ruling. If the party who is subject to the order disputes the finding of the ~~judge~~ judicial officer, the party may seek review of the decision as provided by the applicable court rules.

(e) If the application for the filing of a pleading is granted pursuant to this section, the period of time commencing with the filing of the application requesting permission to file the action and ending with the issuance of an order permitting filing of the action shall not be computed as a part of any applicable period of limitations within which the matter must be instituted.

(f) If, after a party who is subject to pre-filing restrictions has made application and been granted permission to file or advance a case pursuant to this section, any judicial officer hearing or presiding over the case, or any part thereof, determines that the person is attempting to add parties, amend the complaint, or is otherwise attempting to alter the parties and issues involved in the litigation in a manner that the judicial officer reasonably believes would constitute abusive litigation, the judicial officer shall stay the proceedings and

refer the case back to the judicial officer who granted the application to file, for further disposition.

(g)(1) If a party who is protected by an order restricting abusive litigation is served with a pleading filed by the person who is subject to the order, and the pleading does not have an attached order allowing the pleading, the protected party may respond to the case by filing a copy of the order restricting abusive litigation.

(2) If it is brought to the attention of the court that a person against whom prefiling restrictions have been imposed has filed a new case or is continuing an existing case without having been granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose of the matter. This action may be taken by the court on the court's own motion or initiative. The court may take whatever action against the perpetrator of abusive litigation deemed necessary and appropriate for a violation of the order restricting abusive litigation.

Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2023.